

CITY OF HAYWARD

AGENDA REPORT

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|-------------------|-------------------|
| AGENDA DATE | <u>07/09/02</u> |
| AGENDA ITEM | <u>6</u> |
| WORK SESSION ITEM | <u> </u> |

TO: Mayor and City Council

FROM: Finance and Internal Services Director

SUBJECT: Formation of a Community Facilities District

RECOMMENDATION:

It is recommended that the City Council 1) adopt the attached resolutions forming the Eden Shores Community Facilities District No. 1 (CFD), and authorizing the issuance of bonds and 2) introduce the attached ordinance, which levies a special tax on the CFD.

DISCUSSION:

At its May 28, 2002 meeting the Council adopted a resolution of intention that initiated proceedings to form Eden Shores CFD No. 1. Council also adopted a resolution of intention to incur bonded indebtedness that set the maximum amount of debt that could be issued by the CFD. As discussed with Council at the meeting any debt issued by the CFD will be paid entirely from special taxes levied on the parcel holders contained within the boundaries of the CFD.

Also, at the May 28, 2002 Council meeting staff indicated that the appraised value of the property was \$36.9 million. However, that value was based on an appraisal that was prepared in November of 2001. Given the estimated date that this issue would go to market, staff requested that an updated appraisal be prepared. The updated appraisal has been completed as of June 13, 2002 and the new appraised value is \$29.9 million. The change in value was discussed with the appraiser and the appraiser noted that a longer absorption (sell out) period was used in the June 13, 2002 appraisal resulting in a lower value. The appraiser indicated that a longer absorption period was more reflective of current market conditions.

Using the legally mandated ratio of 3:1, the amount of debt that may be issued is \$9,965,000. This limitation is reflected in the attached resolutions. After allowing for costs of issuance and required reserves approximately \$8.5 million will be available for qualifying projects.

Exhibit A, attached provides a schedule of improvements that are to be funded by the CFD. As shown in the schedule, there is qualifying work totaling approximately \$8.6 million. This amount is in excess of the net funding that will be available, however, qualifying projects can only be funded to the extent that bond proceeds are available.

The City must hold a public hearing to consider the creation of CFD No. 1 and the issuance of debt. State law requires at least a thirty-day notice period following the adoption of the

resolution of intention before the public hearings may be scheduled. The appropriate notice was given setting July 9, 2002 as the hearing date. During the hearing, any property owner in the proposed CFD or interested parties may protest the establishment of the CFD or the boundaries of the CFD. If the owners of more that one-half of the land in the proposed CFD protest, the proceedings must be discontinued for one year.

Assuming there is no majority protest, Council can proceed to adopt the resolution of formation, which officially establishes CFD No. 1. The resolution contains all of the information found in the resolution of intention adopted earlier and sets the maximum of debt at \$9.965 million. Also the maximum tax rate is set at \$9,020 per acre. The resolution of formation also makes the finding that the proposed special tax levy has not been precluded by majority protest and that all proceedings were conducted in conformity with the Mello-Roos Act.

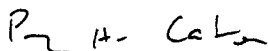
Assuming there is no protest, Council can then proceed to adopt the Resolution Determining Necessity to Incur Bonded Indebtedness. This resolution formally establishes the maximum amount of debt for CFD No. 1 at \$9.965 million and makes the finding that all proceedings were conducted in conformity with the Mello-Roos Act.

After CFD No. 1 is formally created the levy of the special tax must be approved by two-thirds of the votes cast by property owners in CFD No. 1. Normally, this election must be held at least 90 days after the public hearing. However, this waiting period may be waived with unanimous consent of all landowners within the District. The two land owners have agreed to waive this requirement hence voting will occur July 9, 2002.

Following the election results Council is asked to introduce the attached tax ordinance, which imposes the special tax levy on the landowners. The ordinance authorizes and levies special taxes within CFD No. 1 beginning in FY 2002-03 and continuing each fiscal year thereafter until payment in full of any bonds issued by the City for CFD No. 1.

On file with the City Clerk are the preliminary official statement, fiscal agent agreement, funding and acquisition agreement, community facilities district report and other documents necessary for the issuance of bonds and disbursement of bond proceeds by the City for Eden Shores CFD No. 1.

Recommended by:



Perry H. Carter, Finance and Internal Services Director

Approved by:



Jesús Armas, City Manager

Attachments: Exhibit A: Facilities and Estimated Costs
Draft Resolutions
Draft Ordinance

EXHIBIT A

Facilities and Estimated Costs

| <u>Facility</u> | <u>Estimated Cost</u> |
|-----------------------------|-----------------------|
| Onsite Grading/Paving | 905,000.00 |
| Offsite Grading/Paving | 1,000,000.00 |
| Onsite Concrete | 380,000.00 |
| Offsite Concrete | <u>330,000.00</u> |
| Total Streetwork | 2,615,000.00 |
| Onsite Storm Drain | 2,200,000.00 |
| Onsite Sanitary Sewer | 500,000.00 |
| Onsite Water | <u>500,000.00</u> |
| Total Onsite Underground | 3,200,000.00 |
| Offsite Storm Drain | 150,000.00 |
| Offsite Sanitary Sewer | <u>600,000.00</u> |
| Total Offsite Underground | 750,000.00 |
| Traffic Signals | 499,500.00 |
| Sanitary Sewer Pump Station | 590,000.00 |
| Flood Walls and Access Road | <u>970,000.00</u> |
| Grand Total | 8,624,500.00 |

DRAFT



HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

**RESOLUTION OF FORMATION OF
COMMUNITY FACILITIES DISTRICT**

**Community Facilities District No. 1
(Eden Shores)**

WHEREAS, on May 28, 2002, this Council adopted a Resolution entitled "A Resolution of Intention to Establish a Community Facilities District" (the "Resolution of Intention") with respect to Community Facilities District No. 1 (Eden Shores) (the "CFD") of the City pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act"); and

WHEREAS, the Resolution of Intention incorporates a map of the proposed boundaries of the CFD, states the facilities to be provided, the cost of providing such facilities and the rate and method of apportionment of the special tax to be levied within the CFD to pay principal of and interest on bonds proposed to be issued with respect to the CFD, and is on file with the City Clerk and the provisions thereof are incorporated herein by this reference as if fully set forth herein; and

WHEREAS, the facilities to be provided as stated in the Resolution of Intention are set forth in Exhibit A attached hereto and hereby made a part hereof; and

WHEREAS, this Council noticed a public hearing to be held on July 9, 2002, all pursuant to the Act and the Resolution of Intention relating to the proposed formation of the CFD; and

WHEREAS, at the hearing all interested persons desiring to be heard on all matters pertaining to the formation of the CFD, the facilities to be provided therein and the levy of said special tax were heard and a full and fair hearing was held; and

WHEREAS, at the hearing evidence was presented to this Council on said matters before it, including a report to be prepared by the City's Director of Finance (the "Report") as to the facilities to be provided in the CFD and the costs thereof, a copy of which is on file with the City Clerk, and this Council at the conclusion of said hearing is fully advised in the premises; and

WHEREAS, at the hearing this Council modified the Resolution of Intention by reducing the maximum special tax for all of the owners of property within the proposed CFD and by making certain other clarifying changes to the rate and method of apportionment of the special tax to read as shown on Exhibit B attached hereto and by this reference incorporated herein.

WHEREAS, written protests with respect to the formation of the CFD, the furnishing of specified types of facilities and the rate and method of apportionment of the special taxes have not been filed with the City Clerk by fifty percent or more of the registered voters residing within the territory of the CFD or property owners of one-half or more of the area of land within the CFD and not exempt from the proposed special tax; and

WHEREAS, the special tax proposed to be levied in the CFD to pay for the proposed facilities to be provided therein has not been eliminated by protest by fifty percent or more of the registered voters residing within the territory of the CFD or the owners of one-half or more of the area of land within the CFD and not exempt from the special tax;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Hayward:

1. Recitals Correct. The foregoing recitals are true and correct.
2. No Majority Protest. The proposed special tax to be levied within the CFD has not been precluded by majority protest pursuant to section 53324 of the Act.
3. Prior Proceedings Valid. All prior proceedings taken by this City Council in connection with the establishment of the CFD and the levy of the special tax have been duly considered and are hereby found and determined to be valid and in conformity with the Act.
4. Name of CFD. The community facilities district designated "Community Facilities District No. 1 (Eden Shores)" of the City is hereby established pursuant to the Act.
5. Boundaries of CFD. The boundaries of the CFD are as set forth in the map of the CFD heretofore recorded in the Alameda County Recorder's Office on June __, 2002, in Book __ at Page __ of Maps of Assessment and Community Facilities Districts.
6. Description of Facilities. The type of public facilities proposed to be financed by the CFD and pursuant to the Act shall consist of those items listed as facilities in Exhibit A hereto and by this reference incorporated herein (the "Facilities").
7. Funding and Acquisition Agreement. The City Manger, or his designee, is hereby authorized and directed to negotiate and enter into a Funding and Acquisition Agreement providing for the City's acquisition of the Facilities, in the form of agreement on file with the Director of Finance and hereby approved, with such additions or changes as the Director of Finance, or his designee, may approve upon consultation with the City Attorney and bond counsel.

8. Special Tax.

a. Except to the extent that funds are otherwise available to the CFD to pay for the Facilities and/or the principal and interest as it becomes due on bonds of the CFD issued to finance the Facilities, a special tax (the "Special Tax") sufficient to pay the costs thereof, secured by the recordation of a continuing lien against all non-exempt real property in the CFD, is intended to be levied annually within the CFD, and collected in the same manner as ordinary *ad valorem* property taxes or in such other manner as may be prescribed by this Council.

b. The proposed rate and method of apportionment of the Special Tax among the parcels of real property within the CFD, in sufficient detail to allow each landowner within the proposed CFD to estimate the maximum amount such owner will have to pay, are shown in Exhibit B.

c. In the case of any Special Tax to pay for the Facilities and to be levied against any parcel used for private residential purposes: (i) the maximum special tax shall be specified as a dollar amount which shall be calculated and thereby established not later than the date on which the parcel is first subject to the tax because of its use for private residential purposes and which amount shall not be increased over time over two percent per year; (ii) the tax year after which no further Special Tax subject to this sentence shall be levied or collected shall be as set forth in Exhibit B hereto; and (iii) under no circumstances will the Special Tax levied against any parcel subject to this sentence be increased as a consequence of delinquency or default by the owner of any other parcel within the CFD by more than ten percent. For the purposes hereof, a parcel is used for "private residential purposes" not later than the date on which an occupancy permit for private residential use is issued.

9. Increased Demands. It is hereby found and determined that the Facilities are necessary to meet increased demands placed upon local agencies as the result of development occurring in the CFD.

10. Responsible Official. The City Manager, or his designee, is the officer of the City who will be responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel number and who will be responsible for estimating future special tax levies pursuant to the Act.

11. Tax Lien. Upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the Streets and Highways Code of California, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the CFD and this lien shall continue in force and effect until the special tax obligation is prepaid and permanently satisfied and the lien canceled in accordance with law or until collection of the tax by the City ceases.

12. Appropriations Limit. In accordance with the Act, the annual appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of the CFD is hereby preliminarily established at \$9,965,000 and said

appropriations limit shall be submitted to the voters of the CFD as hereafter provided. The proposition establishing said annual appropriations limit shall become effective if approved by the qualified electors voting thereon and shall be adjusted in accordance with the applicable provisions of the Act.

13. Election. Pursuant to the provisions of the Act, the proposition of the levy of the special tax and the proposition of the establishment of the appropriations limit specified above shall be submitted to the qualified electors of the CFD at an election the time, place and conditions of which election shall be as specified by a separate resolution of this Council.

14. The City Manager is hereby authorized to execute any and all documents necessary to complete the formation of CFD-1 and the issuance of bonds for the funding of approved projects.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2002

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

EXHIBIT A

City of Hayward Community Facilities District No. 1 (Eden Shores)

Description of Facilities to be Financed by the CFD

The Facilities shown below are to be financed by the above-designated community facilities district (the "CFD") of the City of Hayward (the "City"). The Facilities shall include the attributable costs of engineering, design, planning and coordination, together with the expenses related to the issuance and sale of any special tax bonds, including underwriters' discount, appraisals, reserve fund, capitalized interest, bond counsel, special tax consultant, bond and official statement printing and all other expenses incidental thereto. The Facilities shall be constructed pursuant to plans and specifications approved by the City and by the respective officials of the other public entities that will own any of the Facilities.

The Facilities consist of various public street improvements including landscaping and traffic signals, sanitary sewer and storm drain facilities, a public sports park, and such other public improvements as are authorized under the Act.

EXHIBIT B

COMMUNITY FACILITIES DISTRICT NO. 1 (EDEN SHORES)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A special tax applicable to each Assessor's Parcel in Community Facilities District No. 1 (Eden Shores) (herein "CFD No. 1") shall be levied and collected according to the tax liability determined through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 1, unless exempted by law or by the provisions of Section E below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed into CFD No. 1 unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. Definitions

The terms hereinafter set forth have the following meanings:

"Acre" or "Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable final map, parcel map, or other recorded County parcel map.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Part 1, Division 2, of Title 5 of the Government Code of the State of California.

"Assessor's Parcel" or "Parcel" means a lot or parcel shown on an Assessor's Parcel Map with an assigned APN.

"APN" means the Assessor's Parcel number assigned by the Alameda County assessor to designate an individual Parcel on an Assessor's Parcel Map.

"Assessor's Parcel Map" means an official map of the County Assessor of the County of Alameda designating Parcels by APN.

"Bonds" means any bonds or other debt (as defined in Section 53317(d) of the Act), whether in one or more series, issued by the City for and on behalf of CFD No. 1 under the Act.

“City” means the City of Hayward.

“City Manager” means the City Manager of the City of Hayward or his/her designee.

“Council” means the City Council of the City of Hayward, acting as the legislative body of CFD No. 1.

“Developed Property” means, in any Fiscal Year, all Taxable Property for which a construction building permit, in addition to a grading permit, was issued prior to January 1 of the previous Fiscal Year.

“Facilities” means the public improvements defined as Facilities in the Resolution of Intention.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“Maximum Special Tax” means the maximum Special Tax, determined in accordance with Section C, that can be levied in any Fiscal Year.

“Owner Association Property” means any property within the boundaries of CFD No. 1 owned by a homeowner association or property owner association, including any master or sub-association.

“Proportionately” means, for Developed Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Developed Property. For Undeveloped Property, **“Proportionately”** means that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Undeveloped Property.

“Public Property” means any property within the boundaries of CFD No. 1 that is owned by the federal government, State of California, or other local governments or public agencies.

“Resolution of Intention” means the Resolution of Intention to Establish a Community Facilities District approved by the Council on May 28, 2002.

“Special Tax” means any special tax to be levied each Fiscal Year on Assessor’s Parcels of Taxable Property to fund the Special Tax Requirement. The Special Tax shall be applied to pay for debt service on outstanding Bonds or directly for the Facilities, including appurtenant expenses such as design, engineering, inspection, and financing costs.

“Special Tax Requirement” means the amount necessary in any Fiscal Year to: (i) pay principal and interest on Bonds; (ii) create or replenish reserve funds; (iii) cure any delinquencies in the payment of principal or interest on Bonds that have occurred in the prior Fiscal Year or (based on delinquencies in the payment of Special Taxes that have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected; (iv) pay administrative expenses of the CFD; and (v) pay construction expenses to be funded directly from Special Tax proceeds.

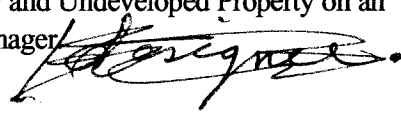
"Square Foot," "Square Footage," or "Square Feet" means the square footage reflected on the original construction building permit issued for construction of a residential or non-residential building.

"Taxable Property" means all of the Assessors' Parcels within the boundaries of CFD No. 1 that are not exempt from the Special Tax pursuant to law or Section E below.

"Undeveloped Property" means all Taxable Property in CFD No. 1 not classified as Developed Property.

B. Assignment to Land Use Categories

For each Fiscal Year, all Taxable Property within CFD No. 1 shall be classified as either Developed Property or Undeveloped Property and shall be subject to Special Taxes in accordance with the rate and method of apportionment determined pursuant to Sections C and D below. If a construction building permit has been issued for development of a structure on an Assessor's Parcel in the CFD, and additional structures are anticipated to be built on the Parcel as shown on the approved site plan for such Parcel, a portion of the Acreage of the Assessor's Parcel shall be taxed as Undeveloped Property if building permits for all of the structures in the approved site plan for the Assessor's Parcel were not issued as of January 1 of the Fiscal Year prior to the Fiscal Year in which the Special Taxes are being levied. If the Acreage assigned to each building anticipated on the Assessor's Parcel is not clearly delineated on a subdivision map, the Acreage of the portion of the Assessor's Parcel to be taxed as Developed Property shall be equal to the structure's pro rata share of the total Square Footage anticipated on the Assessor's Parcel, as determined by the City, multiplied by the total Acreage of the Assessor's Parcel. The remaining Acreage within the Assessor's Parcel shall be taxed as Undeveloped Property. Determination of the amount of Developed Property and Undeveloped Property on an Assessor's Parcel shall be at the sole discretion of the City Manager.



C. Maximum Special Tax

1. Maximum Special Tax, Developed Property

The Fiscal Year 2002-03 Maximum Special Tax for Developed Property in the CFD is \$9,020 per Acre. On each July 1, commencing July 1, 2003, the Maximum Special Tax for Developed Property for the Fiscal Year commencing such July 1 shall be increased by two percent (2%) of the respective Maximum Special Tax in effect in the previous Fiscal Year.

2. Maximum Special Tax, Undeveloped Property

The Fiscal Year 2002-03 Maximum Special Tax for Undeveloped Property in the CFD is \$9,020 per Acre. On each July 1, commencing July 1, 2003, the Maximum Special Tax for

Undeveloped Property for the Fiscal Year commencing such July 1 shall be increased by two percent (2%) of the respective Maximum Special Tax in effect in the previous Fiscal Year.

D. Method of Apportionment of the Special Tax

Commencing with Fiscal Year 2002-03 and for each following Fiscal Year, the City Manager shall determine the Special Tax Requirement to be collected from Taxable Property in CFD No. 1 in the Fiscal Year. The Special Tax shall then be levied as follows:

- First:** The Special Tax shall be levied Proportionately on each Assessor's Parcel of Developed Property that is neither Owner Association Property nor Public Property up to 100% of the Maximum Special Tax for Developed Property, as determined by reference to Section C.1 above;
- Second:** If additional monies are needed to satisfy the costs of the Special Tax Requirement after the first step has been applied, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property that is neither Owner Association Property nor Public Property up to 100% of the Maximum Special Tax for Undeveloped Property, as determined by reference to Section C.2 above;
- Third:** If additional monies are needed to satisfy the costs of the Special Tax Requirement after the first two steps have been completed, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Owner Association Property, using the Maximum Special Tax rate for Undeveloped Property, as determined by the second step above; and
- Fourth:** If additional monies are needed to satisfy the costs of the Special Tax Requirement after the first three steps have been completed, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Public Property that is Taxable Property, using the Maximum Special Tax rate for Undeveloped Property, as determined by the second step above.

E. Limitations

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Taxes shall be levied on land that is within the definition of Public Property. As provided in Sections 53317.3 and 53317.5 of the Act, land that subsequently becomes Public Property will continue to be subject to Special Taxes on the terms and in the priorities set forth in Section D above, except that sports park property will not be subject to Special Taxes once it becomes owned by the City (designated as Lot A on the boundary map for CFD No. 1). In any event, no Special Taxes shall be levied on Owner Association Property or Public Property unless it is necessary to satisfy the Special Tax Requirement pursuant to Section D above.

F. Appeals

Any taxpayer that believes that the amount of the Special Tax has been incorrectly calculated may file a written notice with the City Manager appealing the Special Tax. Any such notice of appeal must be filed by January 1 of the Fiscal Year for which the Special Tax in question has been levied. The City Manager will then promptly review all such timely-filed appeals, and at the City Manager's discretion, meet with the appellant. If the City Manager determines that the Special Tax should be modified, the Special Tax shall be corrected and, if applicable, a refund for Special Taxes paid shall be granted.

G. Manner of Collection

The Special Taxes will be collected in the same manner and at the same time as ordinary ad valorem property taxes; provided, however, that prepayments are permitted as set forth in Section H below and provided further that the City Manager may directly bill the Special Taxes and may collect Special Taxes at a different time or in a different manner as set forth in the proceedings for the formation of CFD No. 1.

H. Prepayment of Special Tax

The following definitions apply to this Section H:

“Future Facilities Costs” means the Public Facilities Costs minus any costs funded by Outstanding Bonds, developer equity, and/or any other source of funding.

“Outstanding Bonds” means all Previously Issued Bonds that remain outstanding, with the following exception: if a Special Tax has been levied against or already paid by an Assessor's Parcel making a prepayment, and the Special will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the City Manager), that next principal payment shall not be included in the amount of Outstanding Bonds for purposes of this prepayment formula.

“Prepayment Date” means the first business day that is: (i) at least 30 days after the City's receipt of a complete signed and written notice of intent to prepay from the property owner; and (ii) at least 75 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Special Taxes.

“Previously Issued Bonds” means all Bonds that have been issued by or on behalf of CFD No. 1 prior to the date of prepayment.

“Public Facilities Costs” means \$8,470,000 in 2002 dollars, which shall increase by three percent (3%) on January 1, 2003, and on each January 1 thereafter.

The entire Special Tax obligation applicable to each Assessor's Parcel in CFD No. 1 may be prepaid and the obligation of the Assessor's Parcel to pay the Special Tax permanently satisfied as described herein, provided that a prepayment may be made only if there are no delinquent Special Taxes at the time of prepayment with respect to such Assessor's Parcel or any other Assessor's Parcel in CFD No. 1 owned or partially owned by the owner or partial owner of the subject Assessor's Parcel, and the owner requesting prepayment provides a written guarantee to the City that there are no such delinquencies. Anyone intending to prepay the Special Tax obligation of an Assessor's Parcel shall provide the City with (i) written notice of intent to prepay, (ii) payment of fees established by the City to process the prepayment request, and (iii) a written guarantee that there are no delinquent Special Taxes or property taxes against the Parcel or any other Parcel in CFD No. 1 owned or partially owned by the owner or partial owner of the subject Parcel. Within a reasonable time frame (as determined by the City), the City shall notify such owner of the prepayment amount for such Assessor's Parcel.

The Prepayment Amount shall be calculated as follows (capitalized terms are defined below):

| | | |
|---------|----------------------------------|-----------|
| | Bond Redemption Amount | (Step 3) |
| plus: | Future Facilities Amount | (Step 5) |
| plus: | Redemption Premium | (Step 6) |
| plus: | Defeasance | (Step 9) |
| plus: | Administrative Fees and Expenses | (Step 10) |
| less: | <u>Reserve Fund Credit</u> | (Step 11) |
| equals: | Prepayment Amount | (Step 12) |

As of the Prepayment Date, the City shall calculate the Prepayment Amount by applying the following steps:

Step Number:

1. Compute the Maximum Special Tax that could be collected from the specified Assessor's Parcel in the Fiscal Year of the Prepayment Date.
2. Divide the Maximum Special Tax computed pursuant to Step 1 for the specified Assessor's Parcel by the Maximum Special Taxes that can be collected within the entire CFD in the Fiscal Year of the Prepayment Date.
3. Multiply the quotient computed pursuant to Step 2 by the Outstanding Bonds to determine the amount of Outstanding Bonds to be retired and prepaid (the "**Bond Redemption Amount**").
4. Compute the current Future Facilities Costs (if any).

5. Multiply the quotient computed pursuant to Step 2 by the amount determined pursuant to Step 4 to determine the amount of Future Facilities Costs to be prepaid (the “**Future Facilities Amount**”).
6. Multiply the Bond Redemption Amount computed pursuant to Step 3 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (the “**Redemption Premium**”).
7. Compute the amount needed to pay interest on the Bond Redemption Amount from the last interest payment date on the Outstanding Bonds to be redeemed until the earliest redemption date for the Outstanding Bonds to be redeemed.
8. Compute the amount the City reasonably expects to derive from the reinvestment of the Bond Redemption Amount plus the Redemption Premium until the redemption date for the Outstanding Bonds that the City expects to redeem with the prepayment.
9. Subtract the amount computed pursuant to Step 8 from the amount computed pursuant to Step 7 (the “**Defeasance**”).
10. The administrative fees and expenses of CFD No. 1 are as calculated by the City and include the costs of computing the prepayment, the costs of redeeming Bonds, and the costs of recording any notices to evidence the prepayment and the redemption (the “**Administrative Fees and Expenses**”).
11. A reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the “**Reserve Fund Credit**”).
12. The Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 3, 5, 6, 9, and 10, less the amount computed pursuant to Step 11 (the “**Prepayment Amount**”).

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HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

**RESOLUTION DETERMINING NECESSITY TO INCUR
BONDED INDEBTEDNESS**

**Community Facilities District No. 1
(Eden Shores)**

WHEREAS, on May 28, 2002, this Council adopted a resolution entitled "A Resolution of Intention to Establish a Community Facilities District" (the "Resolution of Intention") stating its intention to form the City's Community Facilities District No. 1 (Eden Shores) (the "CFD"), pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act"); and

WHEREAS, on May 28, 2002, this Council also adopted a resolution entitled "A Resolution of Intention to Incur Bonded Indebtedness (the "Resolution of Intention to Incur Indebtedness") stating its intention to incur bonded indebtedness within the boundaries of the CFD for the purpose of financing the costs of certain facilities specified in the Resolution of Intention; and

WHEREAS, this Council has held a noticed public hearing as required by the Act about the determination to proceed with the formation of the CFD, the provision of certain defined facilities (the "Facilities") by the CFD and the rate and method of apportionment of the special tax to be levied within the CFD to pay the principal and interest on the proposed bonded indebtedness in the CFD and the administrative costs of the City relative to the CFD; and

WHEREAS, subsequent to the public hearing, this Council adopted a resolution entitled "A Resolution of Formation of Community Facilities District" (the "Resolution of Formation"); and

WHEREAS, this Council has also held a noticed public hearing as required by the Act relative to the matters material to the questions set forth in the Resolution of Intention to Incur Indebtedness; and

WHEREAS, No written protests with respect to the matters material to the questions set forth in the Resolution of Intention to Incur Indebtedness have been filed with the City Clerk.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Hayward:

Section 1. Recitals. The foregoing recitals are true and correct.

Section 2. Necessity. This Council deems it necessary to incur bonded indebtedness in the maximum aggregate principal amount of \$9,965,000 within the boundaries of the CFD for the purpose of financing the costs of the Facilities, as provided in the Resolution of Intention and the Resolution of Formation including, but not limited to, the costs of issuing and selling bonds to finance the Facilities and the costs of the City in establishing and administering the CFD.

Section 3. Entire CFD Liable. The whole of the CFD shall pay for the bonded indebtedness through the levy of the special tax. The tax is to be apportioned in accordance with the formula set forth in Exhibit "B" to the Resolution of Formation.

Section 4. Bonds. Bonds in the maximum amount of \$9,965,000 are hereby authorized subject to voter approval. The bonds may be issued in such series and may mature and bear interest at such rate or rates, payable semiannually or in such other manner, all as this Council or its designee shall determine, at the time or times of sale of such bonds; provided, however, that the interest rate or rates shall not exceed the maximum interest rate permitted by applicable law at the time of sale of the bonds and the bonds or any series thereof shall have a maximum term of not to exceed 3 years.

5. Election. The proposition of incurring the bonded indebtedness herein authorized shall be submitted to the qualified electors of the CFD and shall be consolidated with elections on the proposition of levying special taxes within the CFD and the establishment of an appropriations limit for the CFD pursuant to Section 53353.5 of the Act. The time, place and further particulars and conditions of such election shall be as specified by separate resolution of this Council.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2002

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION CALLING SPECIAL ELECTION

Community Facilities District No. 1
(Eden Shores)

WHEREAS, this Council has adopted a resolution entitled "A Resolution of Formation of Community Facilities District" (the "Resolution of Formation"), ordering the formation of the City's Community Facilities District No. 1 (Eden Shores) (the "CFD"), authorizing the levy of a special tax on property within the CFD and preliminarily establishing an appropriations limit for the CFD, all pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act"); and

WHEREAS, this Council has also adopted a resolution entitled "A Resolution Determining the Necessity to Incur Bonded Indebtedness" (the "Resolution Determining Necessity"), determining the necessity to incur bonded indebtedness in the maximum aggregate principal amount of \$9,965,000 upon the security of the special tax to be levied within the CFD pursuant to the Act; and

WHEREAS, pursuant to the provisions of the Resolution of Formation and the Resolution Determining Necessity, the propositions of the levy of the special tax, the establishment of the appropriations limit and the incurring of the bonded indebtedness shall be submitted to the qualified electors of the CFD as required by the provisions of the Act;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Hayward:

Section 1. Issues Submitted. Pursuant to Sections 53326, 53351 and 53325.7 of the Act, the issues of the levy of the special tax, the incurring of bonded indebtedness and the establishment of the appropriations limit shall be submitted to the qualified electors (as defined below) of the CFD at an election called therefor as provided below.

Section 2. Qualified Electors. This Council hereby finds that fewer than 12 persons have been registered to vote within the territory of the CFD for each of the 90 days preceding the close of the public hearings heretofore conducted and concluded by this Council for the purposes of these proceedings. Accordingly, and pursuant to Section 53326 of the Act, this Council finds that, for these proceedings, the qualified electors are the landowners within the CFD and that the vote shall be by such landowners or their authorized representatives, each having one vote for each acre or portion thereof such landowner owns in the CFD as of the close of the public hearings.

Section 3. Conduct of Election. This Council hereby calls a special election to consider the measures described in Section 1 above, which election shall be held on July 9, 2002, and the results thereof canvassed at the meeting of this Council on July 9, 2002. The City Clerk is hereby designated as the official to conduct the election and to receive all ballots until 8:00 p.m. on the election date. It is hereby acknowledged that the City Clerk has on file the Resolution of Formation, a certified map of the boundaries of the CFD, and a sufficient description to allow the City Clerk to determine the electors of the CFD. Pursuant to Section 53327 of the Act, the election shall be conducted by messenger or mail-delivered ballot pursuant to Section 4000 of the California Elections Code. This Council hereby finds that paragraphs (a), (b), (c) (1) and (c)(3) of Section 4000 are applicable to this special election.

Section 4. Ballot. As authorized by Section 53353.5 of the Act, the three propositions described in section 1 above shall be combined into a single ballot measure, the form of which is attached hereto as Exhibit "A" and by this reference incorporated herein and the form of ballot is hereby approved. The City Clerk is hereby authorized and directed to cause a ballot, in substantially the form of Exhibit "A," to be delivered to each of the qualified electors of the CFD. Each ballot shall indicate the number of votes to be voted by the respective landowner to which the ballot pertains. Each ballot shall be accompanied by all supplies and written instructions necessary for the use and return of the ballot. The envelope to be used to return the ballot shall be enclosed with the ballot, have the return postage prepaid, and contain the following: (a) the name and address of the landowner, (b) a declaration, under penalty of perjury, stating that the voter is the owner of record or authorized representative of the landowner entitled to vote and is the person whose name appears on the envelope, (c) the printed name, signature and address of the voter, (d) the date of signing and place of execution of the declaration pursuant to clause (b) above, and (e) a notice that the envelope contains an official ballot and is to be opened only by the canvassing board of the election.

Section 5. Waivers. This Council hereby further finds that the provisions of Section 53326 of the Act requiring a minimum of 90 days following the adoption of the Resolution of Formation to elapse before the special election are for the protection of the qualified electors of the CFD. There is on file with the City Clerk a written waiver executed by all of the qualified electors of the CFD allowing for a shortening of the time for the special election to expedite the process of formation of the CFD and waiving any requirement for notice, analysis and arguments in connection with the election. Accordingly, this Council finds and determines that the qualified electors have been fully apprised of and have agreed to the shortened time for the election and waiver of analysis and arguments, and have thereby been fully protected in these proceedings. This Council also finds and determines that the City Clerk has concurred in the shortened time for the election. Analysis and arguments with respect to the ballot measures are hereby waived, as provided in Section 53327 of the Act

Section 6. Accountability. Under Sections 50075.1 and 53410 of the Government Code, the following accountability measures shall apply to the special taxes and/or any bonds: (a) the construction and/or acquisition of the Facilities, and the incidental costs thereof including any bonds, all as defined in the Resolution of Formation shall constitute the specific

single purpose; (b) the proceeds shall be applied only to the specific purposes identified in (a) above; (c) there shall be created special account(s) or funds(s) into which the proceeds shall be deposited; and (d) there shall be caused to be prepared an annual report as required by Section 50075.3 or 53411 of the Government Code.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2002

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DRAFT 

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

**RESOLUTION DECLARING RESULTS OF SPECIAL
ELECTION AND DIRECTING RECORDING OF NOTICE OF
SPECIAL TAX LIEN**

**Community Facilities District No. 1
(Eden Shores)**

WHEREAS, this Council has adopted a resolution entitled "A Resolution of Formation of Community Facilities District" (the "Resolution of Formation"), ordering the formation of City's Community Facilities District No. 1 (Eden Shores) (the "CFD"), authorizing the levy of a special tax on property within the CFD and preliminarily establishing an appropriations limit for the CFD, all pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act"); and

WHEREAS, this Council has also adopted a resolution entitled "A Resolution Determining the Necessity to Incur Bonded Indebtedness" (the "Resolution Determining Necessity"), determining the necessity to incur bonded indebtedness in the maximum aggregate principal amount of \$9,965,000 upon the security of the special tax to be levied within the CFD pursuant to the Act; and

WHEREAS, under the provisions of the Resolution of Formation and the Resolution Determining Necessity, and pursuant to a resolution entitled "A Resolution Calling Special Election" (the "Election Resolution") heretofore adopted by this Council, the propositions of the levy of the special tax, the establishment of the appropriations limit and the incurring of the bonded indebtedness were submitted to the qualified electors of the CFD as required by the provisions of the Act; and

WHEREAS, pursuant to the terms of the Election Resolution, which are by this reference incorporated herein, the special election has been held and the City Clerk has on file a Canvass and Statement of Results of Election (the "Canvass"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, this Council has reviewed the Canvass, finds it appropriate and wishes to complete its proceedings for the CFD;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Hayward:
Section 1. Recitals. The foregoing recitals are all true and correct.

Section 2. Issues Presented. The issues presented at the special election were the levy of a special tax within the CFD, the incurring of a bonded indebtedness in the maximum aggregate principal amount of \$9,965,000, and the approval of an annual appropriations limit of not to exceed \$9,965,000 all pursuant to the Resolution of Formation and the Resolution Determining Necessity.

Section 3. Canvass and Issues Approved. The Council hereby approves the Canvass and finds that it shall be a permanent part of the record of its proceedings for the CFD. Pursuant to the Canvass, the issues presented at the special election were approved by the qualified electors of the CFD by more than two-thirds of the votes cast at the special election.

Section 4. Proceedings Approved. Pursuant to the voter approval, the CFD is hereby declared to be fully formed with the authority to levy the special taxes, to incur the approved bonded indebtedness and to have the established appropriations limit, all as heretofore provided in these proceedings and in the Act. It is hereby found that all prior proceedings and actions taken by this Council with respect to the CFD were valid and in conformity with the Act.

Section 5. Notice of Tax Lien. The City Clerk is hereby directed to complete, execute and cause to be recorded in the office of the County Recorder of the County of Alameda a notice of special tax lien in the form required by the Act, such recording to occur no later than 15 days following adoption by the Council of this resolution.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2002

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS;

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DRAFT

ORDINANCE NO. _____

AN ORDINANCE LEVYING SPECIAL TAXES
WITHIN COMMUNITY FACILITIES DISTRICT
NO. 1

mr
7/5/02

(Eden Shores)

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS
FOLLOWS:

Section 1. Recitals.

WHEREAS, on May 28, 2002, this City Council (the "Council") of the City of Hayward (the "City"), adopted a resolution entitled "A Resolution of Intention to Establish a Community Facilities District" stating its intention to establish Community Facilities District No. 1 (Eden Shores) of the City (the "CFD") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, sections 53311, et. seq., of the California Government Code (the "Act"), to finance the acquisition of certain facilities (the "Facilities"); and

WHEREAS, notice was published as required by the Act relative to the intention of the Council to form the CFD and to provide for the Facilities; and

WHEREAS, the Council has held a noticed public hearing as required by the Act relative to the determination to proceed with the formation of the CFD and the rate and method of apportionment of the special tax to be levied within the CFD to finance the costs of the Facilities; and

WHEREAS, at said hearing all persons desiring to be heard on all matters pertaining to the formation of the CFD and the levy of said special taxes were heard, substantial evidence was presented and considered by this Council and a full and fair hearing was held; and

WHEREAS, subsequent to the hearing, this City Council adopted resolutions entitled "A Resolution of Formation of Community Facilities District" (the "Resolution of Formation"), "A Resolution Determining the Necessity to Incur Bonded Indebtedness" (the "Resolution Determining Necessity") and "A Resolution Calling Special Election," which resolutions established the CFD, authorized the levy of a special tax with the CFD, determined the necessity to incur bonded indebtedness in the CFD and called an election within the CFD on the propositions of incurring indebtedness, levying a special tax, and establishing an appropriations limit within the CFD, respectively; and

WHEREAS, on July 9, 2002, a special election was held within the CFD at which the eligible landowner-electors approved such propositions by the two-thirds vote required by the Act;

Section 2. By the passage of this Ordinance the Council hereby authorizes and levies special taxes within the CFD pursuant to the Act, at the rate and in accordance with the formula set forth in the Resolution of Formation, which Resolution is by this reference incorporated herein. The special taxes are hereby levied commencing in fiscal year 2002-2003 and in each fiscal year thereafter until payment in full of any bonds issued by the City for the CFD (the "Bonds"), all as contemplated by the Resolution of Formation and the Resolution Determining Necessity.

Section 3. The City Manager or his designee of the City is hereby authorized and directed each fiscal year to determine the specific special tax rate and amount to be levied for the next ensuing fiscal year for each parcel of real property within the CFD, in the manner and as provided in the Resolution of Formation.

Section 4. Properties or entities of the State, federal or local governments shall be exempt from any levy of the special taxes. In no event shall the special taxes be levied on any parcel within the CFD in excess of the maximum tax specified in the Resolution of Formation.

Section 5. All of the collections of the special tax shall be used as provided for in the Act and in the Resolution of Formation including, but not limited to, the payment of principal of and interest on the Bonds, the replenishment of the reserve fund for the Bonds, the payment of the costs of the City in administering the CFD, and the costs of collecting and administering the special tax.

Section 6. The special taxes shall be collected either by direct billing of the property owner or in the same manner as ordinary ad valorem taxes are collected and, in either case, shall have the same lien priority, and be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for ad valorem taxes; provided, however, that the Council may provide for other appropriate methods of collection by resolutions of the Council. In addition, the provisions of Section 53356.1 of the Act shall apply to delinquent special tax payments.

Section 7. If for any reason any portion of this ordinance is found to be invalid, or if the special tax is found inapplicable to any particular parcel within the CFD, by a court of competent jurisdiction, the balance of this ordinance and the application of the special tax to the remaining parcels within the CFD shall not be affected.

Section 8. The Mayor shall sign this Ordinance and the City Clerk shall cause the same to be published within 15 days after its passage at least once in a newspaper of general circulation published and circulated in the City.

Section 9. Pursuant to Section 620 of the City Charter, this Ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of
Hayward, held the _____ day of _____, 2002, by Council Member _____
_____.

ADOPTED at a regular meeting of the City Council of the City of Hayward
held the _____ day of _____, 2002, by the following votes of members of said
City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DRAFT



HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

**A RESOLUTION AUTHORIZING THE ISSUANCE AND
SALE OF SPECIAL TAX BONDS, AND APPROVING AND
AUTHORIZING RELATED DOCUMENTS AND ACTIONS**

**Community Facilities District No. 1
(Eden Shores)**

WHEREAS, the Council of the City of Hayward has conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the "Act"), to form Community Facilities District No. 1 (Eden Shores) (the "CFD"), to authorize the levy of special taxes upon the land within the CFD, and to issue bonds secured by said special taxes, the proceeds of which are to be used to finance certain public improvements (the "Facilities"), all as described in those proceedings; and

WHEREAS, this Council now wishes to provide for the issuance of the special tax bonds to finance a portion of the Facilities and related costs and expenses, and there have been submitted to this Council certain documents described below providing for the issuance of the special tax bonds for the CFD and the use of the proceeds of those bonds, and this Council with the aid of its staff, has reviewed the documents and found them to be in proper order; and

WHEREAS, there has also been submitted to this Council a form of Preliminary Official Statement in connection with the marketing of such bonds and the Council, with the aid of its staff, has reviewed the Preliminary Official Statement to assure proper disclosure of all material facts relating to such bonds that are in the personal knowledge of the Council Members and the City staff; and

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the special tax bonds and the levy of the special taxes as contemplated by this resolution and the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State of California, including the Act;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Hayward:

Section 1. Bonds Authorized. Pursuant to the Act, this Resolution and the Fiscal Agent Agreement (as defined in Section 3 hereof), special tax bonds designated the "City of Hayward, Community Facilities District No. 1 (Eden Shores) Special Tax Bonds, Series 2002" (the "Bonds") in an aggregate principal amount not to exceed \$9,965,000, are hereby

authorized to be issued. The Bonds shall be executed in the form, shall mature, be payable in the priorities and bear interest at the rates as provided in the Fiscal Agent Agreement. The Council hereby finds that the issuance of the Bonds is in compliance with the Act and applicable provisions of policies of the City relating to the Bonds. In furtherance of the issuance of the Bonds and pursuant to Section 53345.8 of the Act, the City Council hereby finds and determines that the value of the real property subject to the special tax levied pursuant to the Act to pay debt service on the Bonds is at least three times the principal amount of the Bonds to be sold and the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Act on property within the CFD or a special assessment levied on property within the CFD, based upon an appraisal of the property within the CFD that meets the requirement of Section 53345.8 of the Act.

Section 2. Authorities Granted. The City Manager, Director of Finance, or such other official of the City as may be designated by such officer pursuant to Section 8 hereof (each, an "Authorized Officer") is hereby authorized and directed to execute and deliver the documents approved herein in substantially the form on file with the City Clerk, together with such additions or changes as are approved by such Authorized Officer upon consultation with the City Attorney, the City's financial advisor and bond counsel, including such additions or changes as are necessary or advisable to permit the timely issuance, sale and delivery of the Bonds; provided, however, that no additions or changes shall (a) authorize an aggregate principal amount of Bonds in excess of \$9,965,000, (b) result in an average interest rate on the Bonds in excess of 7.50% per annum or such greater amount permitted by applicable law at the time of the sale of the Bonds, (c) result in a total discount in excess of 1.5% of the principal amount of the Bonds, exclusive of any original issue discount, or (d) result in a maturity of the Bonds in excess of 3 years. The approval of such additions or changes shall be conclusively evidenced by the execution and delivery by an Authorized Officer of the documents herein specified.

Section 3. Fiscal Agent Agreement. The Council hereby approves the form of the Fiscal Agent Agreement by and between the City and Wells Fargo Bank, National Association, as fiscal agent (the "Fiscal Agent Agreement") with respect to the Bonds, in substantially the form on file with the City Clerk. The date, manner of payment, interest rate or rates, interest payment dates, denominations, form, registration privileges, manner of execution, place of payment, terms of redemption and other terms of the Bonds shall be as provided in the Fiscal Agent Agreement as finally executed and delivered. The terms and provisions of the Fiscal Agent Agreement, as executed, are incorporated herein by this reference as if fully set forth herein. An Authorized Officer is hereby authorized and directed to execute the Fiscal Agent Agreement on behalf of the City and the City Clerk is hereby authorized and directed to attest thereto, subject to the terms of Section 2 hereof.

Section 4. Official Statement. The Council hereby approves the Preliminary Official Statement prepared in connection with the Bonds in substantially the form submitted to the Council, together with any changes therein or additions thereto deemed advisable by an

Authorized Officer. The Council hereby approves and authorizes the distribution by the underwriter of the Bonds of the Preliminary Official Statement to prospective purchasers of the Bonds, and authorizes and directs an Authorized Officer on behalf of the City to deem the Preliminary Official Statement "final" pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") prior to its distribution to prospective purchasers of the Bonds. The execution of the final Official Statement, which shall include then current financial information regarding the City, Bond pricing information, such other changes and additions thereto deemed advisable by an Authorized Officer, and such information permitted to be excluded from the Preliminary Official Statement pursuant to the Rule, shall be conclusive evidence of the approval of the Official Statement by the City.

Section 5. Continuing Disclosure. The Council hereby approves the form of the Continuing Disclosure Certificate with respect to the Bonds in substantially the form thereof attached to the Preliminary Official Statement on file with the City Clerk. An Authorized Officer is hereby authorized and directed to complete and execute the Continuing Disclosure Certificate on behalf of the City with such changes, additions or deletions as may be approved by the Authorized Officer in consultation with the City's financial advisor and bond counsel.

Section 6. Sale of Bonds. The Council hereby approves the sale of the Bonds by negotiation with Stone & Youngberg, LLC and Samuel A. Ramirez & Co., Inc., as underwriters (collectively, the "Underwriter"). The Bonds shall be sold pursuant to a Bond Purchase Agreement (the "Bond Purchase Agreement") by and between the City and the Underwriter in the form on file with the City Clerk, together with any changes therein or additions thereto approved by an Authorized Officer, whose execution thereof shall be conclusive evidence of such approval of any such additions and changes. The Bond Purchase Agreement shall be executed in the name and on behalf of the City by an Authorized Officer upon submission of a proposal by the Underwriter to purchase the Bonds; *provided, however*, that such proposal is acceptable to the Authorized Officer and is consistent with the requirements of this Resolution. The amount of Underwriter's discount shall be not more than 1.5% of the par amount of the Bonds, exclusive of any original issue discount, and the true effective rate of interest to be borne by the Bonds (taking into account any original issue discount on the sale thereof) shall not exceed 7.50% per annum.

Section 7. Bond Delivery. Upon execution of the Bond Purchase Agreement, the Bonds shall be prepared, executed and delivered to the Fiscal Agent for authentication, all in accordance with the terms thereof. The Fiscal Agent, an Authorized Officer and other responsible officers of the City are hereby authorized and directed to take such actions as are required to cause the delivery of the Bonds upon receipt of the purchase price thereof.

Section 8. Actions Authorized. All actions heretofore taken by the officers and agents of the City with respect to the establishment of the CFD and the sale and issuance of the Bonds are hereby approved, confirmed and ratified, and the appropriate officers of the City are hereby authorized and directed to do any and all things and take any and all actions and

execute any and all certificates, agreements and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Bonds in accordance with this resolution, and any certificate, agreement, and other document described in the documents herein approved. All actions to be taken by an Authorized Officer, as defined herein, may be taken by such Authorized Officer or any designee, with the same force and effect as if taken by the Authorized Officer.

Section 9. Effectiveness. This resolution shall take effect from and after its adoption.

N COUNCIL, HAYWARD, CALIFORNIA _____, 2002

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward